IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

RSA.No. 360 of 2007()

AS.94/2003 of ADDL.DISTRICT COURT, THRISSUR
OS.2225/1998 of III ADDL. M.C.,THRISSUR

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APPELLANT/1ST RESPONDENT:PLAINTIFF

RAMANKUTTY, AGED 62,
S/O.AKAMPADATH CHAMI, KONDAZHI VILLAGE DESOM,
TALAPPILLY TALUK, REP. BY HIS POWER OF
ATTORNEY HOLDER KESAVAN, S/O.VELAPPAN,
PARAMEL HOUSE, PUTHURKARA DESOM, AYYANTHOLE
VILLAGE, THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: APPELLANT AND 2ND RESPONDENT/DEFENDANTS

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1. P.U. GOPIRAJ, S/O.POLIYATH UNNIKRISHNAN
SREEKRISHNA NIVAS, RAMAVARMAPURAM DESOM,
VIYOOR VILLAGE, THRISSUR TALUK.

2. VISWANATHAN P.U.,
S/O.POLIYATH UNNIKRISHNAN, SREEKRISHNA NIVAS,
RAMAVARMAPURAM DESOM, VIYOOR VILLAGE,
THRISSUR TALUK.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.799/2007 IN R.S.A.NO.360/2007

25.5.2007 DISMISSED SD/- M.Sasidharan Nambiar

Judge

/true copy/

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO.360 OF 2007

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Dated this the 25th day of May, 2007

JUDGMENT

Plaintiff in O.S.2225/1998 on the file of Munsiff Court, Thrissur is the appellant. Respondents are the defendants. Suit was filed seeking a decree for permanent prohibitory injunction restraining respondents from trespassing into the plaint schedule property. Plaint schedule property is having an extent of 10 cents in survey No.590/3 and 590/4 of Viyoor village. It admittedly originally belonged to Unnikrishnan as per a patta issued by the Government in 1971. Case of the appellant is that as per Ext.B1 settlement deed 2152/1985, the property was settled in favour of Santha, the daughter of Unnikrishnan and subsequently under Ext.A2 assignment deed, property was purchased by the appellant and since then appellant has been in possession and enjoyment of the property and respondents have no manner of

right or possession over the same and they attempted to trespass on the plaint schedule property and therefore a decree is to be granted restraining them from trespassing into the plaint schedule property. Second respondent remained ex parte. First respondent filed a written statement disputing the rights of the respondent. It was contended that plaint schedule property is not the property settled in favour of Santha and appellant is not in possession of the plaint schedule property and therefore he is not entitled to the decree for injunction sought for. Learned Munsiff on the evidence of PW1 and DW1 and Exts.A1 to A5 and B1 upheld the case of the appellant and granted a decree for injunction. First respondent challenged the decree and judgment before District Court,Thrissur in A.S.94/2003. Learned Additional District Judge on reappreciation of evidence found that the property covered under Ext.B1 and the property assigned under Ext.A2 are not the same.

Relying on the descrepancy in the description of the property including the side measurements, it was found that appellant is not entitled to a decree for injunction granted by the trial court. The appeal was allowed and the suit was dismissed. The second appeal is filed challenging the decree and judgment of the first appellate court.

2. Learned counsel appearing for appellant was heard.

3. The arguments of the learned counsel for the appellant was that the first Appellate Court did not appreciate the evidence and contentions in the proper perspective. It was argued that first Appellate Court omitted to take note of the fact that first respondent has no property anywhere near the plaint schedule property and the balance extent of the property which originally belonged to Unnikrishnan was divided as per the final decree and therefore the descrepancy in the side measurements would not make any difference and the

first Appellate Court should not have interfered with the decree granted by the trial court.

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal. The suit is one for injunction. It is for the appellant to prove that he has been in possession of the plaint schedule property on the date of institution of the suit. The fact that respondents do not have any property in their possession touching the disputed property by itself is not a ground to grant a decree as sought for by the appellant. It is not disputed that if it is to be found that the property covered under Ext.A2, is not the property settled in favour of Santha, the daughter of Unnikrishnan under Ext.B1, then for the property left with Unnikrishnan respondents who are admittedly brothers of Santha would also have equal right with Santha. If that be the case, appellant an assignee from Santha cannot be granted a decree

for injunction for the sole reason that respondents have no property near to the disputed property.

5. As rightly found by the courts below, a perusal of the description of the property including the side measurements and boundaries of the property covered under Ext.B1 and Ext.A2 show that there is difference in the description casting serious doubt with regard to the identity of the property covered under Exts.B1 and A2. When under Ext.A2 the property assigned in favour of appellant by Santha is a square plot having measurments of 17x144, the property obtained by Santha under Ext.A2 is not a square plot at all. In such circumstance, I do not find any reason to interfere with the finding of the learned District Judge that appellant is not entitled to the decree for injunction sought for. In any event, no substantial question of law is involved. It is made clear that as the suit is only for injunction, the dismissal of the suit will not

prevent the appellant from seeking appropriate remedy in accordance with law, on the basis of the title under Ext.A2.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006